IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.243 OF 2006

MTNL ...Petitioners

v/s

M/s Klassic Constructions Pvt.Ltd. and anr. ...Respondents

Mr S.R. Rajguru for Petitioners.

Mr V.R. Dhond i/b M/s Hemant Sethi and Associates for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 25TH SEPTEMBER 2006.

P.C. :-

1. The amount awarded against claim No.1 by the learned Arbitrator is only challenged in this petition. The only ground of challenge is that as the quantum of work deviated more than 25 % in relation to the additional non-technical work, the rate was fixed, the contractor could not have challenged the rate before the learned Arbitrator. It is submitted that the learned Arbitrator could not have considered whether the rate fixed by the Executive Engineer is proper or not because, according to clause 13.3(iii) of the contract, the rate fixed by the Engineer is final and binding. It is further submitted that before the Executive Engineer, the contractor had not produced any evidence to show as to what is the market rate and therefore, the contractor could not have raised this before the learned Arbitrator. So far as the first ground is concerned, before the learned Arbitrator, admittedly, it was not contended that the rate fixed by the Executive Engineer is not arbitrable. Obviously therefore, that ground cannot be urged by the petitioners. So far as the second ground is concerned, perusal of clause 13.3 of the contract itself shows that the contractor is required to communicate the rate within 15 days, if the

rates are communicated by the contractor, the Executive Engineer while fixing the rate has to consider the rates communicated by the contractor and determine the rate. But, if the contractor does not communicate the rate, then the Executive Engineer has to fix the market rate on his own. That the contractor has not communicated anything to the petitioners does not preclude the contractor from challenging the rate fixed by the Engineer. I do not see any substance in this petition.

Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.